

REGULAR MEETING OF THE BOARD OF DIRECTORS KAUAI ISLAND UTILITY COOPERATIVE

Held at 4463 Pahe`e Street

Lihu`e, Kaua`i, Hawai`i

On June 26, 2018

MINUTES

Call to order at 1:04 pm.

1. Roll Call

1.1 **Present:** Directors Allan Smith (Chairman), Dee Crowell, Janet Kass, James Mayfield, Calvin Murashige (Secretary), Teofilo Tachian, Jan TenBruggencate (Vice Chair), and Peter Yukimura (Treasurer); and David Bissell (President and CEO). A quorum of directors were present.

1.2 **In attendance:** Laurel Loo (General Counsel), Karissa Jonas (CFO and Financial VP), Maile Alfiler (Member Services Mgr.), Harley Eckert (Financial Planning & Strategy Mgr.), Brandie Holt (Finance Manager), Carey Koide (T&D Mgr.), Brad Rockwell (Power Supply Mgr.), Beth Tokioka (Communications Mgr.), Lisa Ubay (HR & Safety Mgr.), Mike Yamane (COO), Shelley Paik (Communications Specialist), and Pua Chin (Executive Administrator); Dawn Huff and Jason Hines of Joule Group; Members of the public (3); and Members of the Press (0).

1.3 **Excused:** Director David Iha

2. **Invocation** – Director Peter Yukimura opened the meeting with a prayer.

3. **Approval of Agenda** - The agenda was approved as circulated.

4. Approval of Minutes

4.1 The 05/29/2018 Regular and Executive Session meeting minutes were approved unanimously. [Motion: Murashige/TenBruggencate]

5. **President's Report.** David Bissell, President and CEO

5.1 The current Cooperative statistics were reported. (Report attached).

5.2 CEO Bissell also reported on the Governors Luncheon and Committee on Water and Resource Management (CWRM) public hearing on Interim Instream Flow Standards (IIFS). The next scheduled meeting of CWRM is August 21st.

6. **Financial Report:** CFO Karissa Jonas reported.

6.1 RUS approved the generation project amendment allowing a potential \$4.5M draw from the D8 loan for those projects.

6.2 CoBank renewed the Unsecured Line of Credit (LOC) reducing it from \$25M to \$15M free of charge. To maintain the LOC at \$25M it would have cost a 0.225% unused line fee.

- 6.3 Cash was invested into CFC short term investments - \$5M into a 90-day note and \$5M into a 180-day note.
- 6.4 Indenture – received 3 of 5 lessor consents but still waiting for Department of Hawaiian Home Lands (DHHL) and Department of Land and Natural Resources (DLNR). The attorney’s office is working to get the items on the respective State Commission meeting agendas
- 6.5 Working with Hawaii Emergency Management Agency and FEMA for storm damage recovery. Also working on getting remediation grant funds.
- 6.6 Responses from the Request for Proposals (RFP) to perform an updated Depreciated Study are under review.
- 6.7 The May 2018 financials were reviewed.

7. NRECA Hawaii Director Report – Director David Iha

- 7.1 Director Iha was excused to attend a NRECA Board Meeting in Arlington, VA.

8. Committee Reports

8.1 Executive – Committee Chair, Jan TenBruggencate

- 8.1.1 The committee met June 15th and received updates from Lisa Ubay, Manager of Human Resources and Safety.
- 8.1.2 Reports from Directors and staff on the CFC Forum and VERGE conferences were also discussed.
- 8.1.3 The committee provided authorization for the CEO to proceed with the immediate ordering of replacement parts for the D9 Turbo. The item was also discussed and approved by the F&A committee. Ratification of the Executive Committee decision will be discussed in New Business.

8.2 Finance & Audit – Committee Chair, Peter Yukimura

- 8.2.1 In addition to the financial updates and report by CFO Jonas, the committee also discussed the problems with the vendor for upper Waiahi hydro generator and having General Counsel look into the matter.
- 8.2.2 The committee will also recommend ratification of the Executive Committee decision regarding the D9 Turbo.

8.3 Government Relations/Legislative – Committee Chair, Phil Tacbian

- 8.3.1 The committee decided to have a meeting with the Hawaii based US congressional liaisons. The dates have not yet been set.
- 8.3.2 There was also discussion about inviting NRECA’s CEO for a site visit to KIUC.
- 8.3.3 The potential of KIUC hosting the NRECA Region 7&9 meeting was also discussed.
- 8.3.4 Directors and staff were invited by the County of Kauai, Ben Sullivan to ride one of the demo electric buses today.

8.4 International - Committee Chair, David Iha – no report.

8.5 Member Relations – Committee Chair, Calvin Murashige

8.5.1 The committee met on June 15th. In addition to reports and updates from the Member Services and Communications departments, the committee reviewed requests to approve two (2) recommendations from the Loan Review Committee for Revolving Loan Fund (RLF) loans. The committee approved both recommendation and will ask for the Boards consideration under New Business.

8.6 Policy – Committee Chair, Dee Crowell

8.6.1 The committee reviewed board policies #3 and #10 and recommends both for approval. Neither policy had any substantive changes.

8.7 Strategic Planning – Committee Chair, James Mayfield (via conference call)

8.7.1 The committee and discussed a requested proposal for putting in telecommunications on the island. The pro forma was two times higher than mainland. Areas of study have been narrowed to only higher density locales.

8.7.2 A request for staff to do a break even study for EV charges on Kauai was also discussed.

8.7.3 Staff was also asked to look into FEMA grant monies for recovery.

9. Charitable Foundation (CF) Board – President Teofilo Tacbian

9.1 The CF Board met on June 19th discussed the following items:

9.1.1 The total amount given to KEO for the low income electric bill assistance program is \$140k.

9.1.2 Operation Round-Up was discussed at length. A committee was formed to discuss this issue. Members of the committee include David Iha, Shelley Paik, Beth Tokioka, Trinette Kauai and Maile Alfiler. They will look at how any monies raised from the program will be handled.

9.1.3 A letter of resignation was received from Kathryn Williams, CF Board Vice Chair as she is retiring. Maile Alfiler was appointed as Vice Chair through the end of the current term. The CF Board requests ratification of Maile Alfiler’s appointment as a CF Board member.

9.1.4 Shelley Paik was asked to report on a “thank you” included in the Catholic Charities newsletter for the CF donation for 60 adult bus passes. Eleven recipients secured employment, 15 found shelter and housing, and 33 others were able to get crucial services.

10. Public Testimony. Sharon Goodwin and Sandy Herndon provided oral testimony.

A recess was taken at 1:35pm. The meeting reconvened at 1:46pm.

Joule Group Update: Dawn Huff and Jason Hines of Joule Group provided updates on their current projects.

- Waikoko project and standing with CWRM – In 2017, the Board on Land and Natural Resources (BLNR) approved modifications to the ditch systems. Storm events, flooding,

and road conditions prohibited work from commencing earlier in the year delaying the project. Modifications were completed a month and a half ago. These modifications were to get water back into the streams quickly and to ensure that water would be released into the stream during any stream flow conditions. The KIUC Board took action shortly after the BLNR meeting approving the costs for the modifications. Erin Ueno from the Commission on Water Resource Management (CWRM) has done site visits and was aware of the timing behind the plans.

- Joule Group has met with various state agencies, including the Attorney General, and land divisions to discuss Chapter 343 requirements for the long term water lease. The KIUC Board approved the associated costs and authorization to proceed with the studies. The reports should be done in 1-1/2 months.
- Meetings were also held with the Department of Hawaiian Home Lands (DHHL) in January to discuss their water needs. Additional days were spent in the field on Kauai with DHHL staff. There will be additional follow-up when CWRM gets closer to setting the IIFS.
- The designs for the long term modifications will be reviewed and formulated by CWRM for their feedback to ensure the designs meet their requirements.
- Summary of Westside project – Interviewing a shortlist of engineers and General contractors. Putting together recommendations for the next stage of engineering. Archaeologists have completed their fieldwork and preliminary results should be done in August. There is a lot of local involvement, not with contractors as team lead, but as subcontractors. Contractors are being urged to use local workforce and subs. Spent a day on site and in meetings with contractors for the project.

11. New Business

11.1 Re-appointment of Dee Crowell as Hawaii Representative on NRECA Resolutions Committee (Board Chair Allan Smith)

11.1.1 The motion to approve carried (Iha excused).
[TenBruggencate/Murashige]

IN FAVOR:	Crowell, Kass, Mayfield, Murashige, Smith Tacblian, TenBruggencate & Yukimura	Total – 8
OPPOSED:	None	Total – 0
EXCUSED:	Iha	Total – 1

11.2 Appointment to the NRECA Region 9 Nominating Committee (Board Chair Allan Smith)

11.2.1 Director TenBruggencate was nominated and accepted.

11.2.2 The motion to approve carried (Iha excused). [Murashige/Kass]

IN FAVOR:	Crowell, Kass, Mayfield, Murashige, Smith Tacblian, TenBruggencate & Yukimura	Total – 8
OPPOSED:	None	Total – 0
EXCUSED:	Iha	Total – 1

11.3 **Board Policy #3, Rules Governing Board Meetings (Director Dee Crowell, Policy Committee Chair)**

11.3.1 There were no substantive changes made to the policy. The committee reviewed and recommended approval.

11.3.2 The motion to approve carried (Iha excused). [Crowell/Mayfield]

IN FAVOR:	Crowell, Kass, Mayfield, Murashige, Smith Tacblian, TenBruggencate & Yukimura	Total – 8
OPPOSED:	None	Total – 0
EXCUSED:	Iha	Total – 1

11.4 **Board Policy No. 10, Legal Representation and Use of Attorneys (Director Dee Crowell, Policy Committee Chair)**

11.4.1 There were no substantive changes made to the policy. The committee reviewed and recommended approval.

11.4.2 A motion to approve carried (Iha excused). [Crowell/Murashige]

IN FAVOR:	Crowell, Kass, Mayfield, Murashige, Smith Tacblian, TenBruggencate & Yukimura	Total – 8
OPPOSED:	None	Total – 0
EXCUSED:	Iha	Total – 1

11.5 **Revolving Loan Fund Loan, Island School 2018 \$140k (Director Calvin Murashige, Member Relations Chair)**

11.5.1 Items 11.5 and 11.6 were taken together.

11.5.2 Both items were passed to the Member Relations Committee from the Loan Review Committee (LRC). The Member Relations Committee recommends approval.

11.5.3 The motion to approve both Revolving Loan Fund loans (Item 11.5 and 11.6) per the recommendation by the Loan Review Committee carried. (Iha excused) [Murashige/TenBruggencate]

IN FAVOR:	Crowell, Kass, Mayfield, Murashige, Smith Tacblian, TenBruggencate & Yukimura	Total – 8
OPPOSED:	None	Total – 0
EXCUSED:	Iha	Total – 1

11.6 **Revolving Loan Fund Loan, Haole Girl Island Sweets 2018 \$55k (Director Calvin Murashige, Member Relations Chair)**

11.6.1 This item was taken together with Item 11.5 and approved.

11.7 **Port Allen D9 Turbo Repair (Peter Yukimura, F&A Committee Chair)**

11.7.1 Director Yukimura recommended ratification of the actions of the Executive Committee granting emergency authorization to the CEO for the procurement of the necessary repair parts.

- 11.7.2 Brad Rockwell, Power Supply Manager, noted the amount being requested was reduced from \$960k to \$510k. The parts are expected on island in 10 days.
- 11.7.3 A motion to ratify the decision of the Executive Committee at the amended reduced cost carried. (Iha excused) [Murashige/Kass]

IN FAVOR:	Crowell, Kass, Mayfield, Murashige, Smith Tacbian, TenBruggencate & Yukimura	Total – 8
OPPOSED:	None	Total – 0
EXCUSED:	Iha	Total – 1

CEO Bissell reported on the recent PUC approval of the PMRF solar project and congratulated Beth Tokioka and Brad Rockwell for their efforts to bring the project to fruition. He further stated this will be KIUC’s 3rd dispatchable solar project and, once built, will push KIUC to 70% renewable. With the potential addition of the pumped storage/hydro project on the Westside KIUC may be up to 90%.

11.8 Ratify the election of Maile Afilier to the Charitable Foundation Board (Teofilo Tacbian, KIUC Charitable Foundation Board President)

11.8.1 The motion to approve carried. (Iha excused)

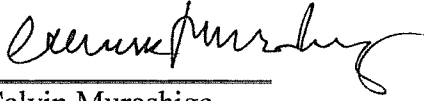
IN FAVOR:	Crowell, Kass, Mayfield, Murashige, Smith Tacbian, TenBruggencate & Yukimura	Total – 8
OPPOSED:	None	Total – 0
EXCUSED:	Iha	Total – 1

12. Calendar:

- 12.1 **June 27, 2018** – Top 100 Breakfast Mtg (8:00a.m., Kauai Marriott)
- 12.2 **June 28, 2018** – CAK Scholarship Meeting (5:00pm, Kauai Marriott)
- 12.3 **July 4, 2018** – HOLIDAY (Independence Day), KIUC Offices Closed
- 12.4 **July 20, 2018** – Board Committee Meetings (9:00am, MCR)
- 12.5 **July 21, 2018** – NTBG Moonlight and Music (5:30pm, NTBG)
- 12.6 **July 25, 2018** – Annual Membership Meeting (5:00pm, Kauai Veteran Center)
- 12.7 **July 31, 2018** – Regular Board Meeting (1:00pm., KIUC Main Conf Rm)

13. Executive Session. At 2:19 p.m. the Board entered into an Executive Session closed to the public on matters limited to those specified in Section II. A. 2. of Board Policy No. 16. The items to be discussed in the Executive Session are matters of a proprietary or financial nature, public disclosure of which could affect on-going or potential negotiations or legal or administrative proceedings and human resource issues related to the hiring, evaluating, dismissing or disciplining an officer or employee and a matter requiring legal consultation on issues pertaining to the powers, duties, privileges, immunities and liabilities of the Board of Directors.

14. **Adjournment.** The open session of the Meeting was reconvened at 2:59 p.m. and upon the motion of Director Murashige and the second of Director TenBruggencate, there being no further business the meeting was adjourned at 3:00 p.m.



Calvin Murashige
Secretary



President's Report

June 26, 2018

David Bissell, President and CEO



President's Report

David Bissell, President and CEO
June 26, 2018

Safety (May)			
	Month	2018 YTD	2017 YTD
Recordable Incidents	1	1	6
Days Away/Restricted	25	25	203

STATISTICS


Availability and Reliability:			
	Month	2018 YTD	2017 YTD
Reportable Outages	1	24	13
Average Outage Hours Per Customer	0.02	0.94	0.65

Efficiency (May)			
	Month	2018 YTD	2017 YTD
Net Plant Heat Rate	8,945	9,266	9,164
Peak Demand (MW)	70.8		

Residential Rates:		
June 2018	\$0.363/lwh	Up \$0.02 from May

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Chamber of Commerce Governor's Luncheon 6/31



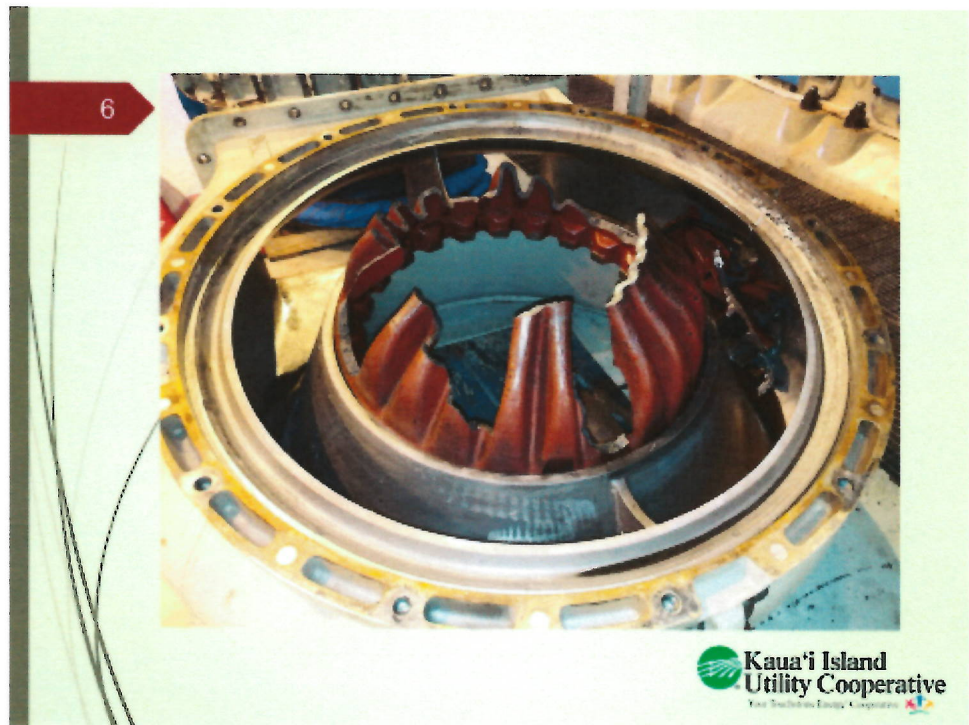
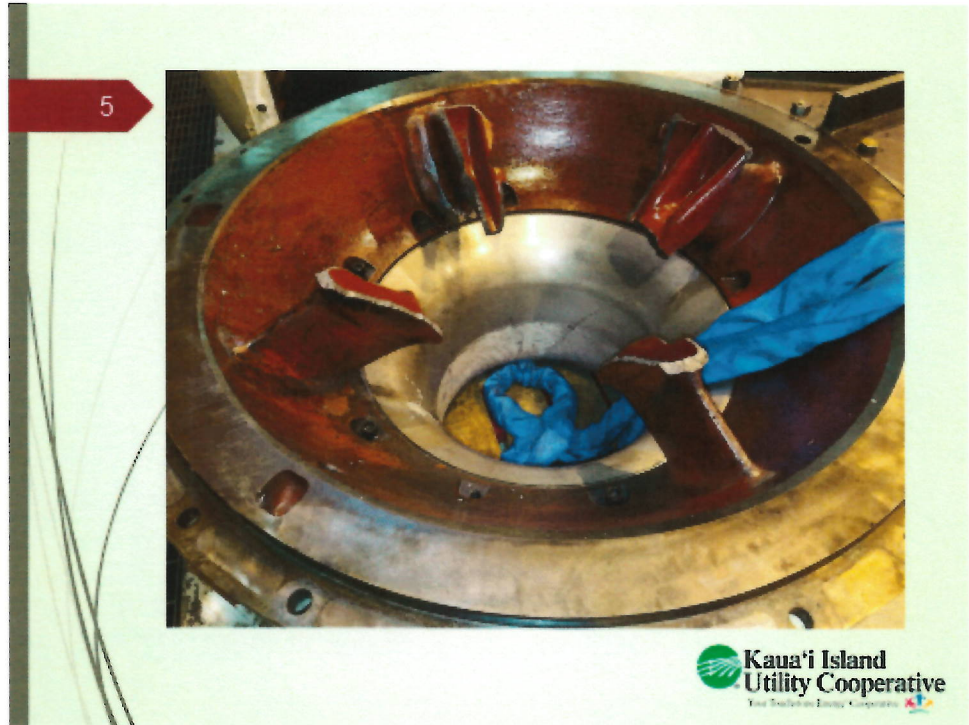
Kaua'i Island
Utility Cooperative
Your Sustainable Energy Cooperative

4

PAGS D9 Turbo Damage



Kaua'i Island
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Your Sustainable Energy Cooperative





KAUA'I ISLAND UTILITY COOPERATIVE ("KIUC")
BOARD POLICY NO. 3
(Reviewed ~~10/25/2016~~06/28/2018)

RULES GOVERNING BOARD MEETINGS

PURPOSE OF POLICY:

To establish rules governing meetings of the KIUC Board of Director (the "Board").

POLICY CONTENT:

A. **Scheduling of Board meetings.** Annual, Regular and Special meeting of the Board shall be scheduled as follows:

1. **Annual Meetings** - An Annual Meeting of the Board shall be held on the island of Kauai within ten (10) days following the day on which the election of Directors is certified to the Board upon such notice and at such time and place as the Board may determine. The Annual Meeting shall be for the purpose of the installation of newly elected Directors, the election of the officers of this Association for the ensuing year, and the transaction of such other business as may properly come before the meeting. Notice of any Annual Meeting may be waived by attendance at the meeting, except when a Director attends the meeting and objects to the transaction of business, or by a waiver of notice signed before or during or within a reasonable time after the meeting with good cause.
2. **Regular Meetings** - Regular Meetings of the Board, in addition to its Annual Meeting, shall be held on the island of Kauai at least once each month upon such notice and at such time and place as the Board may determine. Notice of

any Regular Meeting may be waived by attendance at the meeting, except when a Director attends the meeting and objects to the transaction of business, or by a waiver of notice signed before or during, or within a reasonable time after the meeting with good cause.

3. **Special Meetings** - Special Meetings of the Board may be held on the island of Kauai whenever called by the Chairman or on the written request of any Director. Notice of any such Special Meeting shall be given by the Chairman or Secretary to the Directors in the following manner: (i) with at least twenty-four (24) hours' notice given to each Director personally; (ii) by first-class mail deposited at least five (5) days prior to the meeting; or (iii) with at least twenty-four (24) hours' notice by any other reasonable means (including, without limitation, facsimile, e-mail or other electronic means). The purpose of each Special Meeting shall be specified in the notice of the meeting. Notice of any Special Meeting may be waived by attendance at the meeting, except when a Director attends the meeting and objects to the transaction of business, or by a waiver of notice signed before or during, or within a reasonable time after the meeting with good cause.

B. **Specific Rules.** The following specific rules shall govern all KIUC Board Meetings:

1. **Participation by Telephone.** Members of the Board may participate in a meeting through use of conference telephone or other similar communications equipment, so long as all Directors participating in such meeting can hear one another.

2. **Quorum for Voting.** A majority of the voting Directors in office shall constitute the quorum necessary for the transaction of business at any regular or special meeting of the Board, but if less than a quorum is present, those voting Directors present may adjourn the meeting from time to time until a quorum shall be present with no further notice of the meeting required. All questions shall be decided by the affirmative vote of a majority of the entire voting membership of the Board whether present at the meeting or not (four [4] if the number of Directors is seven [7] and five [5] if the number of Directors is eight [8] or nine [9]) except as otherwise specifically provided in the Bylaws.
3. **Notice to Members.** Notice of all meetings of the Board shall be given to all members by posting of prominent signs at all Association locations where Association employees are permanently assigned, or by mailing such notice to the last known address of each member. ~~Additional notice may also be given or~~ by such other reasonable means (e.g. media advertising and posting on the Association's internet web site) as the Board may determine is appropriate.
4. **Minutes.** Minutes shall be kept of all Board meetings. In addition an audio recording of each Board meeting shall be made, excluding any Executive Sessions. This recording will be used in the preparation and approval of the minutes of each meeting, which, after approval shall be the official record of what transpired at the meeting. After approval of the minutes the audio recording of each meeting shall be sealed and stored until one week after the end of the month following the month in which the minutes are approved, at which time the recordings of a particular meeting shall be destroyed. No later than twenty (20) working days after the day of any Board meeting, a draft copy

of the minutes of that meeting shall be posted on the Association's internet web site.

5. **Conduct**. All meetings of the Board shall be conducted in conformity with Roberts Rules of Order. The CEO will attend meetings as a non-voting member of the board. Other staff members as needed may be invited to attend meetings. During executive sessions, attendance will be restricted to directors only, unless the board requests the attendance of other individuals- [if necessary for informed decision making](#).

RESPONSIBILITY FOR IMPLEMENTATION:

The Board shall be responsible implementing this Policy and enforcing it as needed.

Adopted on this ~~25th~~26th day of ~~October~~June, 20~~16~~18

~~Teofilo Taebian~~Calvin Murashige
Secretary

Reviewed: 06/26/2018

Revised: 10/25/2016

Reviewed: 10/28/2014

Revised: 10/25/2011

Revised: 06/30/2009

Revised: 07/29/2008

Revised: 10/31/2006

Revised: 07/25/2006

Original Adoption: 04/12/2000

**KAUA'I ISLAND UTILITY COOPERATIVE
BOARD POLICY NO. 10
(Reviewed ~~10/25/2016~~ 06/26/2018)**

LEGAL REPRESENTATION AND USE OF ATTORNEYS

PURPOSE OF POLICY:

The Board of Directors ("Board") of Kaua'i Island Utility Cooperative ("KIUC") recognizes that competent legal representation and effective use of attorneys are critical to the successful operation of KIUC. Although an attorney or law firms retained or employed by KIUC ("Attorney" or "Attorneys"), and the Attorneys' representation of KIUC, are governed by rules of professional conduct and other local, state, and federal law, the objective of this policy is to provide additional guidance for, and emphasize important aspects of, the representation of all Attorneys that represent KIUC, and KIUC's use of Attorneys. To the extent this policy is inconsistent with rules of professional conduct or similar requirements governing Attorneys, the rules or requirements govern.

POLICY CONTENT:

A. Retention of Counsel

1. General Counsel. The Board shall retain or employ an Attorney on behalf of KIUC to continually provide general legal services to KIUC ("General Counsel"). General legal services include, but are not limited to: (1) attending and drafting or reviewing the minutes of all meetings of the Board, and all annual and special meetings of KIUC members; (2) negotiating, drafting, and reviewing contracts; (3) providing legal services for the disposition or acquisition of real property and interests in real property; (4) providing legal

services for the borrowing or lending of money; and (5) providing legal services regarding general business, cooperative, tax, and electric utility law.

2. Special Counsel. As reasonably necessary, and following consultation with the General Counsel, KIUC may retain or employ Attorneys to provide special legal services to KIUC (“Special Counsel”). Special legal services require competence in a particular field of law and may include, but are not limited to: (1) representing KIUC in state or federal court, or before a local, state, or federal agency; and (2) providing legal services regarding labor, employment, tax, antitrust, environmental, or intellectual property law. In providing special legal services to KIUC, a Special Counsel shall provide the General Counsel copies of all communications, memoranda, briefs, notices, motions, and other documents prepared, filed, received, or sent by the Special Counsel. The General Counsel may also provide special legal services to KIUC in areas of the General Counsel's competency.

3. Board Counsel. As determined by the Board, upon the recommendation of the General Counsel or otherwise, the Board may retain, employ, direct, and discharge an attorney or law firm other than the General Counsel, or Special Counsel, or their law firms, to periodically provide legal services directly to the Board (“Board Counsel”), with the Board Counsel representing the Board as client. KIUC shall pay a Board Counsel a reasonable fee and reasonable expenses for such services. To the extent practical, a Board Counsel’s representation of the Board must be governed in a manner similar to the manner in which an Attorney’s representation of KIUC is governed under this policy.

B. Competent Legal Representation and Conflicts of Interest. An Attorney shall provide competent legal representation to KIUC, and shall have or acquire the appropriate knowledge,

skills, time, and qualifications necessary to provide competent legal representation. No Attorney, however, guarantees, promises, or warrants a successful or favorable outcome regarding legal services provided to KIUC. An Attorney shall comply with conflict of interest requirements prescribed in applicable local, state, and federal law and rules of professional conduct. An Attorney may provide legal services to an entity in which KIUC owns an interest (“Affiliated Entity”) only if the Attorney complies with these conflict of interest requirements. An Attorney shall inform KIUC’s President and Chief Executive Officer ("CEO"), or person authorized by the CEO in writing of any other entity engaged in generating, transmitting, distributing, marketing, or selling electric energy to which the Attorney provides legal services.

C. **Retaining, Employing, and Discharging Attorneys.** The Board shall make decisions regarding retaining, employing, and discharging the General Counsel and shall annually evaluate the performance of the General Counsel. Following consultation with the General Counsel, the CEO shall make decisions regarding retaining, employing, and discharging any other Attorney. By providing written notice to an Attorney, KIUC may discharge the Attorney, and terminate any attorney engagement agreement, at any time for any reason. By providing written notice to KIUC, and as required or allowed by applicable law and rules of professional conduct, an Attorney shall or may withdraw from representing KIUC and terminate any attorney engagement agreement.

D. **Hiring of Third Parties by an Attorney.** As part of providing legal services to KIUC, and with the CEO’s prior consent, an Attorney may retain another attorney or may use an attorney or paraprofessional associated with the Attorney in a law firm. As reasonably necessary or helpful in providing legal services to KIUC, and subject to any limitations stated in an attorney engagement agreement, an Attorney may contract for a non-attorney and non-paraprofessional third party to provide goods or services.

E. **Directing Attorneys.** Only the Board, the Chair of KIUC, or the CEO may request that an Attorney provide legal services to KIUC; provided, however, if KIUC's General Counsel is requested to perform services that are thought by the general Counsel to be outside the scope of the General Counsel's General Retainer, the general Counsel shall so advise the requestor, and, if the requestor is not the Board, Chair or CEO, have the requestor obtain the necessary approval from the Board, Chair or CEO, as applicable, pursuant to this Policy prior to undertaking the requested services. As requested by an Attorney, and as reasonably necessary or helpful in providing legal services to KIUC, KIUC shall provide the Attorney reasonable access to its directors, officers, employees, consultants, agents, representatives, records, and documents. The CEO and Attorney shall keep the Board reasonably informed regarding any matter for which an Attorney is providing legal services to KIUC. In consultation with the Board or as directed by the Board, the CEO shall direct an Attorney. In providing legal services to KIUC, and subject to the Board or CEO's direction, an Attorney may act on KIUC's behalf in any manner reasonably believed to be in KIUC's best interest. Unless the CEO gives his or her prior consent, an Attorney may not make a statement outside of a tribunal regarding the Attorney's provision of legal services to KIUC, which statement the Attorney knows or reasonably should know will be disseminated by means of public communication. No KIUC director, officer, employee, consultant, agent, or representative may interfere with the Attorney's ability to exercise independent professional judgment and render candid advice.

F. **Attorney Fees and Expenses.** KIUC shall pay its Attorneys a reasonable fee and reasonable expenses. All Attorneys shall provide legal services to KIUC in a cost-effective and efficient manner. The fees and expenses for Attorneys retained by KIUC must be specified in an appropriate attorney engagement agreement. A sample agreement for the engagement of a General

Counsel, which shall be modified as necessary to meet specific circumstances, is attached to this policy as Exhibit "A". A sample agreement for the engagement of Special Counsel, including Board Counsel, which shall be modified as necessary to meet specific circumstances, is attached to this policy as Exhibit "B". KIUC shall indemnify its Attorneys for liability and expenses, including reasonable attorney fees, to which KIUC has exposed the Attorney without the Attorney's fault. The CEO shall cause KIUC's Attorneys to be paid appropriate monthly fees and expenses in accordance with their respective engagement agreements, and within budgeted and delegated authority.

G. **Unauthorized Practice of Law.** No KIUC director, officer, employee, consultant, agent, or representative may provide legal services to KIUC unless the individual is an attorney admitted to practice law in an appropriate jurisdiction.

H. **KIUC as Client.** In providing legal services to KIUC, an Attorney represents KIUC as client, acting through its authorized directors, officers, employees, and members. In representing KIUC, an Attorney does not represent KIUC's directors, officers, employees, or members. If the Board gives its informed, written, and prior consent, and if an Attorney complies with applicable conflict of interest requirements, then the Attorney may represent an Affiliated Entity and the Attorney may represent individual KIUC directors, officers, employees, and members in matters related to the Attorney's representation of KIUC.

I. **Attorney-Client Privilege.** Confidential communications between KIUC, or its agent or representative, and the Attorney, or the Attorney's agent or representative, made to facilitate the Attorney's provision of legal services to KIUC are protected by the attorney-client privilege. KIUC directors, officers, employees, consultants, agents, and representatives shall not disclose these communications to third parties, other than those to whom disclosure is made in furtherance

of this provision of legal services, or those reasonably necessary for transmitting the communications. To the extent these communications are disclosed to KIUC employees, consultants, agents, or representatives, they must only be disclosed to individuals who reasonably need to know of the communications.

J. **Attorney's Duty to Inform and Consult.** An Attorney shall keep the Board and the CEO reasonably informed regarding a matter for which the Attorney is providing legal services to KIUC. For decisions regarding the matter to be made by KIUC, the Attorney shall explain the matter to the Board and the CEO to the extent reasonably necessary to permit KIUC to make an informed decision. An Attorney shall promptly comply with KIUC's reasonable request for information.

K. **Reliance.** In providing legal services to KIUC, an Attorney may rely upon information provided by KIUC, unless the Attorney knows that the reliance is unwarranted. In performing his or her duties, a KIUC director, officer, or employee may rely upon information, opinions, reports, and statements prepared or presented by an Attorney. A director, officer, or employee's reliance, however, is only permitted regarding matters involving skills or expertise that he or she reasonably believes are within the Attorney's professional or expert competence. Further, this reliance is only permitted if the director, officer, or employee acts in good faith and reasonably believes that the reliance is warranted and that the Attorney merits confidence.

L. **Evidence of Violation of Law or Breach of Duty.** If an Attorney, other than the General Counsel, knows or reasonably should know of any evidence of an actual or intended material violation of law or material breach of duty, or evidence of an actual or intended violation of law or breach of duty likely to result in substantial injury to KIUC, by KIUC or by any KIUC director, officer, employee, consultant, agent, or representative ("Evidence"), then the Attorney shall report

the Evidence to the General Counsel. If the General Counsel knows or reasonably should know of any Evidence, then the General Counsel shall report the Evidence to the CEO.

Within thirty (30) days of Evidence being first reported, the General Counsel or the CEO, as determined by the CEO, shall investigate the Evidence, respond appropriately to the Evidence, and inform the reporting Attorney regarding the investigation and the response. If an Attorney, other than the General Counsel, reasonably believes ~~that~~ neither the General Counsel nor the CEO has investigated or responded appropriately to the Evidence, or if the Attorney believes it is reasonably necessary in the best interest of KIUC, then the Attorney shall report the Evidence to the Board or the audit committee of the Board (“Audit Committee”) in person and without the presence of any other person, except a person invited by the Attorney. If the General Counsel reasonably believes that the CEO has not investigated or responded appropriately to the Evidence, or if the General Counsel believes it is reasonably necessary in the best interest of KIUC, then the General Counsel shall report the Evidence to the Board or the Audit Committee in person and without the presence of any other person, except a person invited by the General Counsel.

If a reporting Attorney reasonably believes ~~that~~ the Attorney has been discharged because the Attorney reported Evidence, then the Attorney shall inform the Board or the Audit Committee of this belief. To encourage and facilitate the reporting and investigating of Evidence, and responding appropriately to Evidence, the Board or the Audit Committee ~~shall~~ should meet at least quarterly with the General Counsel and without the presence of any other person, except a person invited by the General Counsel.

M. Legal Programs, Publications, and Memberships. KIUC shall encourage the General Counsel to: (1) attend legal programs sponsored by, and to subscribe to legal publications published by, the National Rural Electric Cooperative Association and any association of Electric

Cooperatives located within the state; and (2) be a member of, and attend programs sponsored by, the Electric Cooperative Bar Association and any association of attorneys representing Electric Cooperatives located within the state. The payment of any fees and expenses related to a General Counsel retained by KIUC attending these legal programs, subscribing to these legal publications, or being a member of these associations must be specified in an attorney engagement agreement.

RESPONSIBILITIES:

The Board is responsible for compliance with this policy. The CEO is responsible for communicating with all Special Attorneys regarding such Attorneys' provision of legal services to KIUC.

Adopted on this ~~25th~~ 26th day of ~~October~~ June, ~~2016~~ 2018.

~~Teofilo Taebian~~ Calvin Murashige
Secretary

Reviewed: 06/26/2018
Reviewed: 10/25/2016
Reviewed: 10/28/2014
Revised: 12/20/2011
Revised: 04/22/2008
Original Adoption: 06/30/2004

EXHIBIT "A"

GENERAL COUNSEL ENGAGEMENT AGREEMENT

This AGREEMENT ("Agreement") made this ____ day of _____, 200____, by and between Kaua'i Island Utility Cooperative. ("KIUC"), having its principal place of business at 4463 Pahee St., Lihue, HI 96766, and _____ ("Attorney"), having its principal place of business at _____, with the Agreement being effective on _____.

RECITALS

1. KIUC is an electric cooperative organized under the provisions of the Chapter 421C of the Hawaii Revised Statutes which desires to engage a General Counsel to provide general legal services and any special legal services determined by the KIUC Board of Directors ("Board").
2. Attorney is a Hawaii _____ duly licensed and providing legal services in the State of Hawaii.
3. Attorney is able and willing to act as the General Counsel of KIUC under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of their mutual understandings, the mutual covenants contained herein, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. General Agreement. Pursuant to this Agreement, Attorney shall provide legal services to KIUC, and KIUC shall pay Attorney. In entering this Agreement, KIUC and Attorney have formed or continue an attorney-client relationship for the provision of the legal services stated in this Agreement.
2. Policy. Attorney and KIUC, respectively, shall comply with applicable provisions of KIUC Policy No. 10, entitled "Legal Representation and Use of Attorneys" ("Policy"), which Policy is incorporated in this Agreement by reference.
3. General Counsel. As described in the Policy, and as indicated below, Attorney shall provide legal services to KIUC as General Counsel. In such capacity Attorney shall provide KIUC with general legal services and any special legal services determined by the Board or KIUC's President and Chief Executive Officer ("CEO").
4. Staffing. _____ will be the attorney primarily responsible for providing general legal services to KIUC as General Counsel. Attorney may also utilize the services of other lawyers, legal assistants and law clerks employed by Attorney. Work assignments will be made, whenever possible, in a way that maximizes Attorney's legal effectiveness and time efficiency, and minimizes KIUC's legal expenses.

5. General Retainer. KIUC shall pay Attorney as General Counsel _____ dollars (\$ _____) per month plus Hawaii General Excise Tax (currently 4.16 percent) (“General Retainer”) for attending all regular meetings of the Board, all annual and special meetings of KIUC members, and reviewing all minutes thereof, and for providing the following general legal services:

_____.

6. Non-Retainer Fees. Unless otherwise provided in this Agreement, KIUC shall pay Attorney, or other attorneys or paraprofessionals associated with Attorney, the following fees for each hour, or portion thereof rounded up to the nearest 1/10th of an hour (6 minutes), spent providing legal services to KIUC (“Hourly Fees”):

_____ dollars (\$ _____) per hour spent by Partners

_____ dollars (\$ _____) per hour spent by Counsel or Of Counsel Attorneys

_____ dollars (\$ _____) per hour spent by Associate Attorneys

_____ dollars (\$ _____) per hour spent by Legal Assistants

Attorney may from time-to-time modify the above Hourly Fees but only with KIUC’s prior written consent. As an alternative to such Hourly Fees, KIUC and Attorney may agree upon a fixed fee for any appropriate increment of legal services provided by

Attorney. Hawaii General Excise Tax (currently 4.16 percent) will be added to all such non-retainer fees.

7. Non-Legal Services. KIUC shall pay Attorney for non-legal, non-overhead goods or services provided to, by, or through Attorney as part of, and specifically for, Attorney's provision of legal services to KIUC ("Non-Legal Services"). Non-Legal Services include, but are not limited to: (a) extensive photocopying; (b) computerized legal research; (c) audio or video recording or transcription; (d) travel, including transportation, lodging, and meals; (e) long distance telephone; (f) document transmission or delivery services, including messenger, facsimile, and mail; (g) court costs; and (h) filing fees. Hawaii General Excise Tax (currently 4.16 percent) will be added to any taxable costs. The amount paid for a Non-Legal Service must be reasonable and may be based upon Attorney's direct costs associated with the Non-Legal Service, a reasonable allocation of Attorney's overhead expense associated with the Non-Legal Service, and competitive amounts paid for the Non-Legal Service. Non-Legal Services reasonably anticipated to cost more than _____ dollars (\$ _____) during any month may not be provided to, by, or through Attorney without KIUC's prior consent.

8. Third Party Services. KIUC shall pay for goods or services provided by a third party as part of, and specifically for, Attorney's provision of legal services to KIUC ("Third Party Services"). As determined by Attorney, KIUC shall: (a) pay the third party for a Third Party Service or (b) reimburse Attorney for Attorney's payment to the third

party for a Third Party Service. Third Party Services reasonably anticipated to cost more than _____ dollars (\$ _____) may not be provided without KIUC's prior consent.

9. Invoices. Each month, Attorney shall send KIUC invoices as follows:

(a) An invoice setting out the amount due as a General Retainer for the previous month as set forth in paragraph 4 above.

(b) An invoice describing any general legal services provided by Attorney, any Non-Legal Services provided to, by, or through Attorney, and any Third Party Services for which Attorney has paid during the previous month but not included in the General Retainer or part of any special legal services performed as requested by the Board or CEO.

(c) An invoice or invoices describing any special legal services requested by the Board or CEO and provided by Attorney, including any Non-Legal Services or Third Party Services for which Attorney has paid during the previous month associated with such special services.

10. Payment. After KIUC receives an invoice from Attorney, and unless KIUC disputes an Invoice Amount: (a) KIUC shall pay Attorney within thirty (30) days; (b) if KIUC does not pay an Invoice Amount within thirty (30) days, then the unpaid Invoice Amount is subject to a late payment fee of _____ percent (_____ %) per month and KIUC shall pay Attorney for all expenses, including reasonable attorney fees,

incurred by Attorney to collect the unpaid Invoice Amount; (c) if KIUC does not pay an Invoice Amount within forty-five (45) days, then following fifteen (15) days written notice to KIUC, Attorney may terminate this Agreement and withdraw from providing legal services to KIUC; and (d) if KIUC does not pay an Invoice Amount exceeding _____ dollars (\$ _____) within thirty (30) days, then following five (5) days written notice to KIUC, Attorney may terminate this Agreement and withdraw from providing legal services to KIUC. These payment terms of this Agreement survive termination of the Agreement.

11. Disputed Amounts. If KIUC disputes all or part of an Invoice Amount, then KIUC shall notify Attorney in writing within thirty (30) days of receiving the invoice. If Attorney and KIUC do not resolve the dispute within thirty (30) days of Attorney's receipt of KIUC's notice of dispute, then Attorney and KIUC shall submit the dispute to binding arbitration administered by the Hawaii State Bar Association, or by another organization agreed upon by Attorney and KIUC. These disputed amount terms of this Agreement survive termination of the Agreement.

12. Publications, Memberships, Meetings, and Seminars. KIUC shall:

_____ On Attorney's behalf, pay for annual subscriptions to the *Legal Reporting Service* and *Personnel Practice Pointers*, publications by the National Rural KIUC Association ("NRECA")

_____ Pay for Attorney to become and remain a member of the Electric Cooperative Bar Association ("ECBA")

_____ Pay for Attorney to become and remain a member of any association of attorneys representing electric cooperatives located within the state

If Attorney provides legal services to KIUC as General Counsel, then, as indicated below and in the same manner as KIUC pays and reimburses members of the Board, KIUC shall pay and reimburse Attorney to attend:

_____ NRECA's annual member meeting

_____ NRECA's annual legal seminar

_____ NRECA's annual workplace law seminar

_____ ECBA's annual member meeting

_____ Any annual meeting of any association of electric cooperatives located within the state

_____ Any annual legal seminar for attorneys representing electric cooperatives located within the state

13. Termination of Agreement. As provided in this Agreement or the Policy, KIUC or Attorney shall or may terminate this Agreement.

14. Termination Payments and Refunds. Upon termination of this Agreement, and pursuant to the terms of this Agreement governing payment and disputed amounts: (a) KIUC shall pay Attorney all undisputed General Retainer, Hourly Fee, Non-Legal Service, and Third Party Service amounts for services provided prior to termination and (b) KIUC shall pay Attorney the undisputed, proportionate, and reasonable part of any Fixed Fee amount for services provided prior to termination. Within thirty (30) days of termination of this Agreement, and pursuant to the terms of this Agreement governing disputed amounts: (a) Attorney shall refund to KIUC any undisputed General Retainer, Non-Legal Service, and Third Party Service amounts representing payment for services not provided prior to termination and (b) Attorney shall refund to KIUC the undisputed, proportionate, and reasonable part of any Fixed Fee amount representing payment for services not provided prior to termination.

15. Governing Law. This Agreement will be governed by, and interpreted under, the law of Hawaii.

KAUA'I ISLAND UTILITY COOPERATIVE

[NAME OF ATTORNEY]

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT "B"

SPECIAL COUNSEL ENGAGEMENT AGREEMENT
(May also be used for Board Counsel)

This AGREEMENT ("Agreement") made this ____ day of _____, 200____, by and between Kaua'i Island Utility Cooperative. ("KIUC"), having its principal place of business at 4463 Pahee St., Lihue, HI 96766, and _____ ("Attorney"), having its principal place of business at _____, with the Agreement being effective on _____.

RECITALS

1. KIUC is an electric cooperative organized under the provisions of the Chapter 421C of the Hawaii Revised Statutes which desires to engage Counsel to provide special legal services to it.
2. Attorney is a Hawaii _____ duly licensed and providing legal services in the State of Hawaii.
3. Attorney is able and willing to provide the requested special legal services to KIUC under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of their mutual understandings, the mutual covenants contained herein, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

16. General Agreement. Pursuant to this Agreement, Attorney shall provide legal services to KIUC, and KIUC shall pay Attorney. In entering this Agreement, KIUC and Attorney have formed or continue an attorney-client relationship for the provision of the legal services stated in this Agreement.

17. Policy. Attorney and KIUC, respectively, shall comply with applicable provisions of KIUC Policy No. 10, entitled “Legal Representation and Use of Attorneys” (“Policy”), which Policy is incorporated in this Agreement by reference.

18. Special Counsel. As described in the Policy, and as indicated below, Attorney shall provide legal services to KIUC as Special Counsel and provide KIUC the following special legal services, with Attorney’s representation of KIUC limited to providing these special legal services:

_____.

19. Staffing. _____ will be the attorney primarily responsible for providing the above special legal services to KIUC as Special Counsel. Attorney may also utilize the services of other lawyers, legal assistants and law clerks employed by

Attorney. Work assignments will be made, whenever possible, in a way that maximizes Attorney's legal effectiveness and time efficiency, and minimizes KIUC's legal expenses.

20. Fees. Unless otherwise provided in this Agreement, KIUC shall pay Attorney, or other attorneys or paraprofessionals associated with Attorney, the following fees for each hour, or portion thereof rounded up to the nearest 1/10th of an hour (6 minutes), spent providing legal services to KIUC (“Hourly Fees”):

_____ dollars (\$_____) per hour spent by Partners

_____ dollars (\$_____) per hour spent by Counsel or Of Counsel Attorneys

_____ dollars (\$_____) per hour spent by Associate Attorneys

_____ dollars (\$_____) per hour spent by Legal Assistants

Attorney may from time-to-time modify the above Hourly Fees but only with KIUC’s prior written consent. As an alternative to such Hourly Fees, KIUC and Attorney may agree upon a fixed fee for any appropriate increment of legal services provided by Attorney. Hawaii General Excise Tax (currently 4.16 percent) will be added to all such non-retainer fees.

21. Non-Legal Services. KIUC shall pay Attorney for non-legal, non-overhead goods or services provided to, by, or through Attorney as part of, and specifically for, Attorney’s provision of legal services to KIUC (“Non-Legal Services”). Non-Legal Services

include, but are not limited to: (a) extensive photocopying; (b) computerized legal research; (c) audio or video recording or transcription; (d) travel, including transportation, lodging, and meals; (e) long distance telephone; (f) document transmission or delivery services, including messenger, facsimile, and mail; (g) court costs; and (h) filing fees. Hawaii General Excise Tax (currently 4.16 percent) will be added to any taxable costs. The amount paid for a Non-Legal Service must be reasonable and may be based upon Attorney's direct costs associated with the Non-Legal Service, a reasonable allocation of Attorney's overhead expense associated with the Non-Legal Service, and competitive amounts paid for the Non-Legal Service. Non-Legal Services reasonably anticipated to cost more than _____ dollars (\$ _____) during any month may not be provided to, by, or through Attorney without KIUC's prior consent.

22. Third Party Services. KIUC shall pay for goods or services provided by a third party as part of, and specifically for, Attorney's provision of legal services to KIUC ("Third Party Services"). As determined by Attorney, KIUC shall: (a) pay the third party for a Third Party Service or (b) reimburse Attorney for Attorney's payment to the third party for a Third Party Service. Third Party Services reasonably anticipated to cost more than _____ dollars (\$ _____) may not be provided without KIUC's prior consent.

23. Invoices. Each month Attorney shall send KIUC an invoice or invoices describing any special legal services provided by Attorney during the previous month, including any

Non-Legal Services or Third Party Services, which Attorney has provided or paid during the previous month associated with such special services.

24. Payment. After KIUC receives an invoice from Attorney, and unless KIUC disputes an Invoice Amount: (a) KIUC shall pay Attorney within thirty (30) days; (b) if KIUC does not pay an Invoice Amount within thirty (30) days, then the unpaid Invoice Amount is subject to a late payment fee of _____ percent (____ %) per month and KIUC shall pay Attorney for all expenses, including reasonable attorney fees, incurred by Attorney to collect the unpaid Invoice Amount; (c) if KIUC does not pay an Invoice Amount within forty-five (45) days, then following fifteen (15) days written notice to KIUC, Attorney may terminate this Agreement and withdraw from providing legal services to KIUC; and (d) if KIUC does not pay an Invoice Amount exceeding _____ dollars (\$ _____) within thirty (30) days, then following five (5) days written notice to KIUC, Attorney may terminate this Agreement and withdraw from providing legal services to KIUC. These payment terms of this Agreement survive termination of the Agreement.
25. Disputed Amounts. If KIUC disputes all or part of an Invoice Amount, then KIUC shall notify Attorney in writing within thirty (30) days of receiving the invoice. If Attorney and KIUC do not resolve the dispute within thirty (30) days of Attorney's receipt of KIUC's notice of dispute, then Attorney and KIUC shall submit the dispute to binding arbitration administered by the Hawaii State Bar Association, or by another

organization agreed upon by Attorney and KIUC. These disputed amount terms of this Agreement survive termination of the Agreement.

26. Termination of Agreement. As provided in this Agreement or the Policy, KIUC or Attorney shall or may terminate this Agreement.

27. Termination Payments and Refunds. Upon termination of this Agreement, and pursuant to the terms of this Agreement governing payment and disputed amounts: (a) KIUC shall pay Attorney all undisputed General Retainer, Hourly Fee, Non-Legal Service, and Third Party Service amounts for services provided prior to termination and (b) KIUC shall pay Attorney the undisputed, proportionate, and reasonable part of any Fixed Fee amount for services provided prior to termination. Within thirty (30) days of termination of this Agreement, and pursuant to the terms of this Agreement governing disputed amounts: (a) Attorney shall refund to KIUC any undisputed General Retainer, Non-Legal Service, and Third Party Service amounts representing payment for services not provided prior to termination and (b) Attorney shall refund to KIUC the undisputed, proportionate, and reasonable part of any Fixed Fee amount representing payment for services not provided prior to termination.

28. Governing Law. This Agreement will be governed by, and interpreted under, the law of Hawaii.

KAUA'I ISLAND UTILITY COOPERATIVE

[NAME OF ATTORNEY]

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____